

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

JIMMIE LEWIS,)
)
Plaintiff,) C.A. No.: 04-1350 (GMS)
)
v.)
)
SYLVIA FOSTER, LANCE SAPERS,)
DAVE MOFFITT, R. GRAY,)
MR. JOHNSON, JOHN JOE,)
)
Defendants.)

DEFENDANT DR. SYLVIA FOSTER'S RESPONSE TO PLAINTIFF'S
MOTION FOR ORDER OF DECLARATION FOR THE DEFENDANT
DR. SYLVIA FOSTER'S CONTEMPT OF COURT ORDERS
PURSUANT TO RULE 37(b)(2)(D)

COME NOW, Defendant, Dr. Sylvia Foster, by and through her undersigned counsel and responds to Plaintiff's Motion for Order of Declaration for the Defendant Dr. Sylvia Foster's Contempt of Court Orders Pursuant to Rule 37(b)(2)(D), and in support thereof, avers the following:

1. Plaintiff, Jimmie Lewis, filed the present Motion on December 27, 2006 contending Defendant, Dr. Sylvia Foster, has failed to adhere to the various discovery requests numbered II, III, IV, V, VI and VII; which were previously filed.
2. The Order signed by the Honorable Judge Sleet of September 27, 2006 specifically reads, "Defendants shall respond to interrogatories and request for admission *properly filed* by Plaintiff within the discovery period . . ." [emphasis added] Defendant, Dr. Sylvia Foster's position continues to be the previous requests referenced in Plaintiff's most recent Motion for Order Compelling Discovery and the present Motion were not "properly filled". Therefore, Defendant contends a response to such requests is not warranted pursuant to

the Court's Order of September 27, 2006.

3. Defendant, Dr. Sylvia Foster, filed a Motion for Protective Order on October 27, 2006 in response to the repeated requests by Plaintiff for discovery materials. The arguments presented in said Motion for Protective Order are herein incorporated in this response in opposition to the Plaintiff's present Motion for Order of Declaration for the Defendant Dr. Sylvia Foster's Contempt of Court Orders Pursuant to Rule 37(b)(2)(D). Additionally, Defendant, Dr. Sylvia Foster, incorporates the arguments presented in the Response to Plaintiff's Motion to Compel Discovery Responses; which was filed with the Court on December 29, 2006.

3. At this time, the Court has not ruled on the outstanding Motion for Protective Order. Until a ruling is made on said Motion, Defendant, Dr. Sylvia Foster's position is to refrain from responding to the inordinate amount of discovery requests which have been submitted by Plaintiff in this case. In the event the Court rules responses are necessary from Defendant, Dr. Sylvia Foster, then efforts will be undertaken to abide by the ruling of the Court.

Therefore, in light of the arguments submitted above and responses thereto, Defendant, Dr. Sylvia Foster, respectfully requests this Honorable Court to deny the Plaintiff's Motion for Order of Declaration for the Defendant Dr. Sylvia Foster's Contempt of Court Orders Pursuant to Rule 37(b)(2)(D).

RESPECTFULLY SUBMITTED,
REGER RIZZO KAVULICH & DARNALL LLP

/s/ Louis J. Rizzo, Jr.

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DATED: 1-3-2007

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Defendants.)

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify on this 3rd day of January, 2007 that a true and correct copy of **DEFENDANT DR. SYLVIA FOSTER'S RESPONSE TO PLAINTIFF'S MOTION FOR ORDER OF DECLARATION FOR THE DEFENDANT DR. SYLVIA FOSTER'S CONTEMPT OF COURT ORDERS PURSUANT TO RULE 37(b)(2)(D)** has been served electronically and/or by first class mail, postage prepaid, to the following:

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Dated: 1-3-2007